

NTSB Order No.  
EM-151

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D. C.  
on the 3rd day of February, 1989

PAUL A. YOST, Commandant, United States Coast Guard,

v.

LINDON B. CARMIENTE, Appellant

Docket: ME-134

ORDER DISMISSING APPEAL

The Vice Commandant has moved to dismiss the appeal filed in this proceeding on the ground that the appellant did not file with the Board his notice of appeal within 10 days after service of the Commandant's decision, as required by Section 825.5(a) of the Board's rules of procedure.<sup>1</sup> See 49 CFR Part 825. Specifically, the motion asserts that while appellant's counsel was served with the decision on November 15, 1988, appellant's notice of appeal was not filed until November 29.<sup>2</sup>

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<sup>1</sup>Section 825.5(a) provides as follows:

"§825.5 Notice of Appeal.

- (a) A party may appeal from the Commandant's decision sustaining an order of revocation, suspension, or denial of a license, certificate, document, or register in proceedings described in §825.1, by filing a notice of appeal with the Board within 10 days after service of the Commandant's decision upon the party or his designated attorney. Upon good cause shown, the time for filing may be extended."

<sup>2</sup>Counsel for appellant, while not disputing that the notice of appeal was untimely, maintains that it was only one day late because he did not receive the Commandant's decision until November 16 and since the 10th day thereafter was a Saturday (the 26th) the notice was not due for filing until Monday the 28th pursuant to Section 821.10, 49 CFR Part 821.

In a response opposing the Motion to Dismiss, counsel for appellant argues that the tardiness should be excused because of the difficulty he encountered in attempting to locate the appellant

to determine whether he wanted to appeal the Commandant's decision to the Board.<sup>3</sup> We agree with the Coast Guard that counsel's inability to communicate with appellant before the expiration of the 10-day period does not establish good cause, for that circumstance did not preclude him from seeking before the deadline an extension of the filing date until such time as appellant's desires concerning an appeal could be ascertained.

In the absence of good cause a late notice of appeal will be dismissed.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Commandant's motion to dismiss is granted, and
2. The notice of appeal filed in Docket ME-134 is dismissed.

KOLSTAD, Acting Chairman, BURNETT, LAUBER, NALL and DICKINSON, Members of the Board, concurred in the above order.

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<sup>3</sup>The Commandant's decision upheld the law judge's determination that appellant's merchant mariner's document and license should be suspended for one month outright and for two months on six months' probation on charges of misconduct and negligence found proved after and evidentiary hearing.